

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**L.J., Appellant**

**and**

**PEACE CORPS, VOLUNTEER SERVICES,  
Washington, DC, Employer**

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**Docket No. 15-0188  
Issued: March 25, 2016**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 27, 2014 appellant filed a timely appeal of July 30 and September 11, 2014 decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has established disability for the periods May 28 to 30, 2014 and on or after June 3, 2014 causally related to her employment injury.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the September 11, 2014 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

### **FACTUAL HISTORY**

On May 12, 2014 appellant, then a 28-year-old Peace Corps volunteer in Namibia, filed an occupational disease claim (Form CA-2) alleging that on March 27, 2014 she first realized that her pregnancy was due to her employment. OWCP accepted her claim for an incidental pregnant state.<sup>3</sup>

In a June 11, 2014 attending physician's report (Form CA-20), Dr. Monica Brown, a treating physician Board-certified in obstetrics and gynecology, diagnosed pregnancy with early vomiting and nausea. She noted that appellant had been hospitalized with hyperemesis gravidarum on May 23 to 27, and May 31 to June 2, 2014. Dr. Brown indicated no other period of disability from performing appellant's job.

Appellant filed a claim for wage-loss compensation (Form CA-7) for the period May 27 to June 9, 2014.

In a letter dated June 26, 2014, OWCP informed appellant that her claim was not payable in its entirety. It stated that it had authorized payment for wage-loss compensation for the periods May 23 to 27 and May 30 to June 1, 2014 as the evidence showed that she had been hospitalized on those dates. The record reflects that appellant received supplemental roll payments from May 23 to 27, 2014 and from May 31 to June 2, 2014. Appellant's claim for wage-loss compensation for the periods May 28 to 30, and June 3, 2014 to the present was denied as she had not submitted any medical evidence supporting her claim of disability. OWCP advised her to submit a medical narrative from her treating physician explaining why she was unable to perform her volunteer duties due to her pregnancy. It gave appellant 30 days to provide this information.

Following OWCP's letter requesting additional information, appellant submitted a claim for wage-loss compensation (Form CA-7) for the period June 10 to 23, 2014.

In a letter dated July 11, 2014, OWCP informed appellant that her claim for wage-loss compensation on and after June 10, 2014 was not payable as there was no medical evidence supporting disability due to the accepted condition. Appellant was advised as to the medical evidence required to establish her claim and given 30 days to provide this information.

On July 24, 2014 OWCP received appellant's claims for wage-loss compensation (CA-7 forms) for the period June 24 to July 21, 2014, and a July 24, 2014 attending physician's report (Form CA-20) from Dr. Lisa Martinez-Franco, a treating physician specializing in obstetrics and gynecology. Dr. Martinez-Franco indicated a period of partial disability for the period July 24 to November 26, 2014 due to appellant "suffering from nausea and vomiting during pregnancy." She advised that the condition of hyperemesis gravidarum might result in appellant being disabled from performing the duties of her job. Dr. Martinez-Franco further advised that the frequency and severity of the symptoms were unpredictable.

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<sup>3</sup> On May 11, 2014 appellant was medically separated from the employing establishment.

By decision dated July 30, 2014, OWCP informed appellant that her claim for wage-loss compensation for the period May 28 to 30 and June 3 to 9, 2014 was denied. It noted that appellant stopped work on May 28, 2014 and that the medical evidence failed to show that her pregnancy disabled her from performing the duties of her volunteer position.

In correspondence dated August 13, 2014, OWCP requested from Dr. Martinez-Franco clarification of appellant's current medical status and disability. It then set forth questions for her to answer regarding appellant's current condition.

By decision dated September 11, 2014, OWCP denied appellant's claim for wage-loss compensation on and after June 10, 2014. It found that the medical evidence submitted failed to establish that she was totally disabled from performing her duties as a volunteer due to her pregnancy.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.<sup>5</sup> For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.<sup>6</sup> Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.<sup>7</sup>

Under FECA the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>8</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.<sup>9</sup> An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.<sup>10</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel A. Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

<sup>6</sup> See *Amelia S. Jefferson*, *id.*; see also *David H. Goss*, 32 ECAB 24 (1980).

<sup>7</sup> See *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>8</sup> *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

<sup>9</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>10</sup> *Merle J. Marceau*, 53 ECAB 197 (2001).

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>11</sup>

### **ANALYSIS**

OWCP accepted appellant's claim for incidental pregnancy. Appellant received wage-loss compensation for disability May 23 to 27 and May 30 to June 2, 2014. By decision dated July 30, 2014, OWCP denied her claim for wage-loss compensation for the periods May 28 to 30, and June 3 to 9, 2014. On September 11, 2014 it issued a decision denying appellant's claim for wage-loss compensation on and after June 10, 2014. Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between her claimed disability for the periods in question and the accepted condition.<sup>12</sup>

The only medical evidence appellant submitted relevant to disability for the periods May 28 to 30 and June 3 to July 23, 2014 is a June 11, 2014 attending physician's report from Dr. Brown. OWCP paid wage-loss compensation for the dates Dr. Brown indicated that appellant had been hospitalized with hyperemesis, which were May 5 to 7, 23 to 27, and May 31 to June 2, 2014. Appellant has not submitted any evidence establishing that she was totally disabled from performing her job as a volunteer for the periods in question due to the accepted incidental pregnant state. It is her burden of proof to provide evidence from a qualified physician to establish her claim for wage-loss compensation for total disability for any period of time. Thus, the Board finds that she has failed to meet her burden of proof.

In support of her claim for wage-loss compensation for the period July 24 to November 26, 2014, appellant submitted attending physician reports by Dr. Martinez-Franco. Dr. Martinez-Franco indicated that appellant was partially disabled for the entire period July 24 to November 26, 2014 as appellant was "suffering from nausea and vomiting during pregnancy." She advised that the condition of hyperemesis gravidarum might result in appellant being disabled from performing the duties of her job. Dr. Martinez-Franco further advised that the frequency and severity of the symptoms were unpredictable. The Board finds that this evidence is not sufficient to establish appellant's disability from performing her job as a volunteer for the period July 24 to November 26, 2014.

Dr. Martinez-Franco's opinion that appellant might require time and days off work in the future due to the unpredictable frequency and severity of her hyperemesis gravidarum symptoms is based on a fear of future injury. It is well established that the possibility of future injury or disability is not a basis for payment of compensation.<sup>13</sup> Dr. Martinez-Franco's July 24, 2014 opinion related appellant's disability from July 24 to November 26, 2014 to future possible periods of disability rather than to appellant's current condition or disability. As her opinion

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<sup>11</sup> See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>12</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>13</sup> *I.J.*, 59 ECAB 408 (2008); *Manuel Gill*, 52 ECAB 282, 286 n.5 (2001).

regarding disability is based on a possibility of disability rather than actual disability, it is insufficient to support her claim for wage-loss compensation for the period in question. Therefore, the Board finds that appellant has not established that she was disabled for the period July 24 to November 26, 2014.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established that she was disabled for the periods May 28 to 30, and on or after June 3, 2014 causally related to her employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated September 11 and July 30, 2014 are affirmed.<sup>14</sup>

Issued: March 25, 2016  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>14</sup> James A. Haynes, Alternate Judge, participated in the preparation of this decision but was no longer a member of the Board effective November 16, 2015.